

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2010-005539

03/08/2012

HONORABLE JANICE CRAWFORD

CLERK OF THE COURT

J. Escarcega

Deputy

IN RE THE MARRIAGE OF
TYLER GENTRY

TYLER GENTRY
P O BOX 94144
PHOENIX AZ 85070

AND

ALLISON GENTRY

HEATH H MCWHORTER

DOCKET-FAMILY COURT CCC
FAMILY COURT SERVICES-CCC

JUDGMENT/DECREE

DECREE OF DISSOLUTION

The Evidentiary Hearing in this matter was conducted on March 6, 2012. During the proceedings, the Court heard from the parties. The Court has since considered the evidence, including the demeanor of the witnesses, reviewed the exhibits as well as the case history, and considered the parties' arguments.

After significant deliberation, the Court makes the following findings and enters the following orders:

THE COURT FINDS as follows:

- A. At the time this action was commenced at least one of the parties was domiciled in the State of Arizona and that said domicile had been maintained for at least 90 days prior to the filing of the Petition for Dissolution of Marriage.

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- B. The conciliation provisions of A.R.S. § 25-381.09 have either been met or do not apply.
- C. The parties were married on February 2, 2009. By operation of law, the marital community is deemed to have terminated on August 27, 2010.
- D. The parties were granted a Decree of Legal Separation on August 18, 2011.
- E. The marriage is irretrievably broken and there is no reasonable prospect for reconciliation.
- F. There are 2 minor children, common to the parties, namely: Alayna L. Gentry (born 09/10/2009) and Rayne A Gentry (born 02/06/2011).
- G. Mother is not pregnant.
- H. This was not a covenant marriage.
- I. To the extent that it has jurisdiction to do so, the court has considered, approved and made provision for the maintenance of each spouse and the division of property and debts.

DISSOLUTION OF MARRIAGE

IT IS ORDERED dissolving the marriage of the parties and restoring each party to the status of a single person.

CUSTODY AND PARENTING TIME

Jurisdictional Findings

THE COURT FINDS that Mother and Father have 2 minor children in common: Alayna L. Gentry (born 09/10/2009) and Rayne A. Gentry (born 02/06/2011). The parties and the minor children have resided in Arizona continuously for at least the six months preceding the filing of the petition for dissolution. This Court, therefore, has jurisdiction as Arizona is the “home state” of the minor children. *See* A.R.S. § 25-1031.

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Best Interest Findings: A.R.S. § 25-403

The parties entered into an agreement titled Parenting Plan for Joint Custody With Joint Custody Agreement in which the parties stipulated to joint legal custody and stipulated that the agreed upon plan is in the best interests of the minor children. The Court has considered the agreement of the parties and the factors under A.R.S. § 25-403.

THE COURT FINDS that there is no history of domestic violence (A.R.S. § 25-403(E) and 25-403.03), any drug related offenses of either party (A.R.S. § 25-403.04) and any sexual offenses (A.R.S. § 25-403.05) sufficient to preclude the award of joint legal custody as agreed.

Legal Custody

THE COURT FURTHER FINDS that that based on the above, it is in children's best interest that Mother and Father be awarded joint legal custody of Alayna L. Gentry (born 09/10/2009) and Rayne A Gentry (born 02/06/2011).

IT IS THEREFORE ORDERED awarding Mother and Father joint legal custody of Alayna L. Gentry (born 09/10/2009) and Rayne A Gentry (born 02/06/2011).

Custody Terms

Parental Access To Records And Information- Both parents are entitled to have equal access to documents and other information concerning each child's education and physical, mental, moral and emotional health including medical, school, police, court and other records directly from the custodian of the records or from the other parent. A person who does not comply with a reasonable request shall reimburse the requesting parent for court costs and attorney fees incurred by that parent to force compliance with this subsection. A parent who attempts to restrict the release of documents or information by the custodian, without a prior court order, is subject to appropriate legal sanctions.

Educational Arrangements- Both parents have the right to participate in school conferences, events, and activities (including extra-curricular), and the right to consult with teachers and other school personnel.

Medical And Dental Arrangements- Both parents have the right to authorize necessary emergency medical/dental treatment and the right to consult with physicians and other medical practitioners. Both parents shall advise the other parent immediately of any emergency medical/dental care sought for each child. Both parents shall cooperate on health matters pertaining to each child and shall keep one another reasonably informed regarding the status of each child's

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health. Both parents shall keep each other informed as to names, addresses, and telephone numbers of all medical/dental care practitioners.

Parental Communication- In furtherance of each child's best interests the parents shall confer and shall consider the views of each parent. The parents shall communicate to address day-to-day and more significant issues. The parents shall use e-mail as their primary method for communication. This method allows the parents to develop their communication and ensures both accountability and verifiability. Both parties shall maintain and regularly review their e-mail accounts. They shall each respond in a timely fashion, even if such response is merely to acknowledge the receipt of information. Each should print copies of all e-mails received and sent so that if an issue arises in the future that has been addressed through e-mail, each party shall have proof as to what was communicated.

Relocation- Neither parent shall relocate the residence of the children outside of the state of Arizona or to a distance greater than 100 miles from the current residential locations unless that parent first secures the written consent of the other or secures a court order authorizing the move. The procedures set forth in the Parenting Plan for Joint Custody with Joint Custody Agreement signed by the parties February 14, 2011 and filed with the Court August 18, 2011 is adopted by the Court and incorporated herein.

Mediation Or Conciliation Services- The parties shall participate in mediation through a private mediator or through this Court's Conciliation Services to resolve any disputes, problems or proposed changes regarding this child custody order or parenting time before seeking further relief from the Court.

Additional Custody Terms- The parties entered into a Parenting Plan for Joint Custody with Joint Custody Agreement that was filed August 18, 2011 (the "Agreement"). The Agreement contains certain additional custody terms, which the Court adopts and incorporates herein by reference.

Parenting Time

The parties agreed to a parenting time schedule as set forth in the Agreement. That parenting time schedule was made an order on August 18, 2011. Under the parenting time schedule in the Agreement, the children are in the care of Father from 5:00 p.m. Monday until 7:30 p.m., Wednesday, from 4:00 p.m. until 8:00 a.m. Thursday, and from 10:30 a.m. Sunday until 8:30 a.m. Monday. The children are in the care of Mother all other times. The Agreement also includes a holiday schedule for parenting time, which, essentially, provides each parent with alternating holidays.

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Father now seeks additional parenting time. In a petition to modify parenting time, the burden is on the party seeking to modify the schedule to show that the modification would be in the children's best interest. *See Bailey v. Bailey*, 3 Ariz. App. 138, 141, 412 P.2d 480, 483 (1966). Thus, Father bears the burden to show that Father's proposed 5/2/2/5 schedule would be in the children's best interest.

Mother opposes Father's request for additional parenting time. Mother first takes the position that Father must show a substantial and continuing change of circumstances before Father can seek to modify parenting time. However, modification of parenting time is based on the best interest of the child and is not limited to a change of circumstances. A.R.S. §25-411.J. Mother also objects to Father's request for a 5/2/2/5 plan due to the children's young age (1 and 2). However, Mother testified that she was also opposed to a 2/2/2/2 schedule because it would interfere with future extracurricular activities.

Father has been caring for the children overnight during his parenting time. Father testified that the children have a relationship with Father's older children that would be benefitted by Father's proposed schedule. Although Father travels, his employment agreement allows him flexibility in scheduling his out-of-town travel. Father testified that he will be able to complete all his traveling during Mother's parenting time.

The Court has considered the factors in A.R.S. §23-403.A and 25-403.1.B. Mother and Father are both capable and loving parents. Although Mother testified that the parties' communications have been tense, it appears to the Court that Mother and Father have been able to effectively co-parent the children. For example, Father's testimony that both Mother and Father try to maintain similar schedules for the children was unopposed.

The Court is, however, concerned that on a 5/2/2/5 schedule is not in the best interest of these very young children. This does not mean that Father's overnight parenting time should be limited to the two (2) overnights per week that Father has under the current parenting time schedule. In fact, the Court encourages Mother to allow Father three (3) non-consecutive overnights per week. This will allow the children to transition into a 5/2/2/5 plan (or some variation thereof) without any significant adjustment when the children become a little older.

THE COURT FINDS that it is not in the children's best interest to modify the current parenting time schedule. Therefore,

IT IS ORDERED that Father's request to modify parenting time is denied.

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CHILD SUPPORT

The Court has considered the testimony and evidence. Mother testified that she works part-time 12 hours per week. Mother also testified that she is not able to increase her hours at work and is not qualified for any other employment other than a minimum wage job. Mother also testified that she has custody of two (2) other children from a previous relationship. Even accepting Mother's testimony, nothing relevant has changed between August 18, 2011, when the parties filed the Agreement to Modify Child Support As Calculated By the Parent's Worksheet for Child Support Information ("Agreement to Modify Child Support"), and now. Specifically,

- On August 18, 2011 when Mother agreed to an attributed income in the amount of \$2500, Mother was not employed.
- Mother received a credit for her two (2) other children in the child support worksheet filed in support of the Agreement to Modify Child Support.
- Father's court ordered child support payment for his two (2) other children has not been changed by a Court order.
- The Child Support Worksheet filed in support of the Agreement to Modify Child Support credited Father with 117 days of parenting time, and Mother testified that Father currently has 114 days of parenting time.

The only thing different is that Mother now wants to calculate child support using the actual cost of \$800 for child care, whereas, in the Child Support Worksheet filed in support of the Agreement to Modify Child Support, the parties agreed to use a cost of \$600 for child care.

THE COURT FINDS that there has not been a substantial and continuing change of circumstances since August 18, 2011. Therefore,

IT IS ORDERED that Mother's Petition to Modify Child Support is denied.

IT IS FURTHER ORDERED reaffirming the current child support order set forth in the Consent Decree for Legal Separation filed August 18, 2011.

Exchange Of Income Information

IT IS FURTHER ORDERED that the parties shall exchange income information every 24 months. Said financial information shall include, but not be limited to: personal tax returns with all schedules, affidavits of financial information, earning statements and other such

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documentation necessary to establish or prove the income of either party. In addition, at the time of the exchange of financial information, the parties shall also exchange residential addresses and the names and addresses of their respective employers.

SPOUSAL MAINTENANCE

Neither party has asked for spousal maintenance under A.R.S. § 25-319(A).

IT IS ORDERED that neither Father nor Mother is awarded spousal maintenance.

DIVISION OF PROPERTY AND DEBTS

Pursuant to the Decree of Legal Separation filed August 18, 2011, the parties agreed to a division of community property and/or debt.

RESTORATION OF NAME

Allison Gentry declines on the record to have her name restored.

IT IS THEREFORE ORDERED not restoring Allison Gentry to her former name.

IT IS FURTHER ORDERED denying any affirmative relief sought before the date of this Order that is not expressly granted above.

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81, *Arizona Rules of Family Law Procedure*.

DATED the 9th day of March, 2012

/s/ Janice K. Crawford

HONORABLE JANICE K. CRAWFORD
JUDICIAL OFFICER OF THE SUPERIOR COURT

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.